Supreme Court, U.S.
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NO. 85-961

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

CLARENCE H. HOLDING,

Petitioner,

v.

SOVRAN BANK, DONALD E. KOONCE, MUTUAL FINANCE CORPORATION, AND THOMAS S. WORD, JR.,

Respondents.

Brief in Opposition to Petition for Writ of Certiorari to the Supreme Court of Virginia

Scott S. Cairns
McGUIRE, WOODS & BATTLE
One James Center
Richmond, Virginia 23219
(804) 644-4131
Attorney for Respondents

APPELLATE PRINTING SERVICES, INC., HERITAGE BLDG., RICHMOND, VA (804) 643-7789

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Question Presented for Review

Should this Court review the Supreme Court of Virginia's denial of Mr. Holding's petition for appeal where no federal question was presented and the denial involved a question of fact?

Parties to the Proceeding

The parties are listed in the style of the case. Sovran Bank, N.A. is a wholly-owned subsidiary of Sovran Financial Corporation. Other than wholly-owned subsidiaries, neither Sovran Financial Corp. nor Sovran Bank, N.A., has any subsidiaries or affiliates. Mutual Finance Corporation is a privately held corporation with no parent corporations, subsidiaries or affiliates.

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Opinion Delivered in the Court Below

The July 10, 1985 and September 6, 1985 Orders of the Supreme Court of Virginia of which Petitioner seeks review are retyped as Exhibit 12, page 24, and Exhibit 13, page 25, to Petitioner's brief.

The Circuit Court's opinion of October 25, 1984 is retyped as Exhibit 3, page 13, to Petitioner's brief.

Grounds Upon Which the Jurisdiction of this Court is Invoked

Respondents deny that this Court has jurisdiction because the Petition for Writ of Certiorari contains no

allegations sufficient to support jurisdiction under Rule 17 of the Rules of this Court, nor does the Petition make any allegation that calls into question the constitutionality of a state statute. See 28 U.S.C. § 1257(3).

Statute Involved

In the Virginia circuit court, Petitioner sought release of a deed of trust pursuant to Virginia Code § 55-66.5(a), which provides:

> Releases made by court. - (a) Any person who owns or has any interest in real estate or personal property on which such encumbrance exists may, after twenty days' notice thereof to the person entitled to such encumbrance, apply to the circuit

court of the county or corporation in whose clerk's office such encumbrance is recorded to have the same released or discharged; and upon proof that it has been paid or discharged or upon its appearing to the court that more than twenty years have elapsed since the maturity of the lien or encumbrance, raising a presumption of payment which is not rebutted at the hearing, such court shall either order the same to be entered by the clerk on the margin of the page in the book wherein the encumbrance is recorded or order the clerk to record a certificate of satisfaction or a certificate of partial satisfaction, which marginal entry or certificate of satisfaction or certificate of partial satisfaction, when so made, shall operate as a release of such encumbrance.

All releases made prior to June twenty-four, nineteen hundred and forty-four, by any court under this section upon such presumption of payment so arising and not rebutted shall be validated.

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Statement of the Case

Sovran Bank, N.A. ("Sovran"), is the executor and trustee under the will of Lillian J. Muse, who died on

August 13, 1983. At the time this action began, Sovran was known as First and Merchants National Bank. Donald E. Koonce is a Trust Officer with Sovran and is responsible for administration of Mrs. Muse's estate. Mutual Finance Corporation is a personal holding corporation of Mrs. Muse, and Thomas S. Word, Jr. is an officer of that corporation.

On July 21, 1976 petitioner Clarence H. Holding ("Mr. Holding") borrowed $75,000 from Mutual Finance Corporation. He endorsed a note for that amount, payable with eight and one-half percent interest per annum, and drafted and executed a deed of trust on certain property owned by him as security for the loan.

On May 24, 1984, nine months after Mrs. Muse's death, Mr. Holding filed a Application for Release of the Deed of Trust, naming Sovran Bank and Donald Koonce as defendants and claiming payment of the note. He later amended his Application to add Mutual Finance Corporation and Mr. Word as defendants.

A hearing was held on September 26, 1984 in the Circuit Court of Westmoreland County, Virginia, at which time Mr. Holding testified in his own behalf and presented various records of Mutual Finance Corporation and Lillian Muse.[1] After a bench

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[1]Certain of those records are
(Footnote Continued)

ruling for defendants, on October 25, 1984, the Circuit Court issued a written opinion[2] that Mr. Holding had presented insufficient evidence of payment or discharge of his indebtedness and denied Mr. Holding's application for release of the deed of trust.

On July 10, 1985 the Supreme Court of Virginia dismissed Mr. Holding's Petition for Appeal, finding no reversible error in the judgment of the Circuit Court. On September 6,

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(Footnote Continued)
attached as Exhibits 6 through 11 to the Petition. However, the Exhibits contain notations, apparently made by Mr. Holding, that did not appear on the records when presented to the Circuit Court.

[2]Exhibit 3 to the Petition for Writ of Certiorari.

1985, the Supreme Court of Virginia denied Mr. Holding's request for a rehearing on his Petition.

Reasons for Denying the Writ

This is an ordinary case of a litigant failing to carry his burden of proof. There are no issues in this action that meet the requirements of Rule 17 or of 28 U.S.C. § 1257(3). There are no special or important reasons for this Court to exercise its discretion and grant Mr. Holding's Petition.

A. No federal question arises from this case because the state court proceedings complied with Constitutional standards.

Although Mr. Holding claims a violation of his Constitutional rights, his Petition fails to explain how the Supreme Court of Virginia

abridged those rights. Moreover, the record clearly shows that the Virginia Supreme Court properly denied Mr. Holding's Petition for Appeal and that the Circuit Court trial was properly conducted and violated no due process rights. No limit was placed on testimony or evidence Mr. Holding was allowed to submit. All documents presented to the Court were received. No restrictions were placed on the cross examination of witnesses and an impartial decision-maker heard the claim. The Court considered the evidence and decided against Mr. Holding. The Circuit Court clearly provided Mr. Holding notice and an opportunity for a hearing appropriate to the nature of the case. Cleveland

Bd. of Educ. v. Loudermill, 470 U.S. ___, 84 L.Ed2d 494, 503 (1985). Mr. Holding cannot claim a violation of due process simply because he was not successful in proving his case. Remington Paper Co. v. Watson, 173 U.S. 443, 451 (1899).

B. The decisions challenged on appeal involved questions of fact which should not be reviewed by this Court.

The Circuit Court's finding that Mr. Holding did not meet his required burden of proof is a question of fact. This Court has held that it will accept a state court's findings in the absence of exceptional circumstances and as long as the findings are not without factual foundation. Frey Roofing Co. v. Wood, 344 U.S. 157, 160

(1953). Mr. Holding has not alleged any exceptional circumstances to cause disruption of the findings of the Virginia courts, and, therefore, his case should not be reviewed by this Court.

Moreover, even if this Court were to take the extraordinary step of re-examining the facts here, the record shows the the Petition for Appeal was properly denied and the Circuit Court correctly found that Mr. Holding failed to present sufficient evidence to support his claim of payment.

Under Virginia Code § 55-66.5, Mr. Holding bore the burden of proving that he paid his debt with an intent to discharge that debt. Hall Bldg. Corp. v. Edwards, 142 Va. 209, 128

S.E.2d 521 (1925). Mr. Holding admitted that he did not pay this indebtedness. He merely presented evidence of certain payments to Mutual Finance Corporation by Mrs. Muse. He presented no evidence concerning the purpose of these payments, other than his own uncorroborated claims. Based upon this evidence the Circuit Court correctly determined that Mr. Holding failed to present evidence sufficient to support a release of the Deed of Trust.

Under the established rule in Virginia, the findings of the trial court are not disturbed on appeal unless they are plainly wrong or without evidence to support them. Virginia Code § 8.01-680. Reviewing

the record and finding no error, the Virginia Supreme Court correctly denied the appeal.

Conclusion

There is no reason for this Court to review the Supreme Court of Virginia's refusal to grant Mr. Holding's Petition for Appeal. There are no Constitutional or even legal issues presented here. Instead, the Virginia Supreme Court's decision is based solely on state law and a finding of adequate factual grounds to support the lower court's decision. Therefore, the Petition for Writ of Certiorari to review the decision of the Virginia Supreme Court should be denied.

Respectfully submitted,

Scott S. Cairns
McGUIRE, WOODS & BATTLE
One James Center
Richmond, Virginia 23219
(804) 644-4131
Attorney for Respondents,
Sovran Bank, Donald E.
Koonce, Mutual Finance
Corporation and Thomas
S. Word, Jr.

CERTIFICATE OF SERVICE

I hereby certify that three true and exact copies of the foregoing Brief in Opposition to Petition for Writ of Certiorari to the Supreme Court of Virginia were mailed, postage prepaid, this 3rd day of January, 1986, to Clarence H. Holding, 1901 Woodbine Road, Richmond, Virginia 23225.